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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 890 (SDA)

5 DARIO QUIRUMBAY,

6 Sentence

7 Defendant.

8 -----x

9 New York, N.Y.
10 April 1, 2019
11 10:00 a.m.

12 Before:

13 HON. STEWART D. AARON,

14 Magistrate Judge

15 APPEARANCES

16 GEOFFREY S. BERMAN

17 United States Attorney for the
18 Southern District of New York

19 RYAN B. FINKEL

20 Assistant United States Attorney

21 EDWARD J. BILINKAS

22 Attorney for Defendant
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(Case called)

MR. FINKEL: Good morning, your Honor. Ryan Finkel, for the government.

THE COURT: Good morning.

MR. BILINKAS: Edward Bilinkas, appearing on behalf of Mr. Dario Quirumbay.

THE COURT: All right. Thank you.

Everyone, please be seated.

Mr. Quirumbay, I am Judge Aaron. On December 26 of 2018, I accepted your plea of guilty to one count of providing contraband in prison in violation of Section 1791(a)(1), (b)(4), and 2 of Title 18 of the U.S.C. You are now here for sentencing.

Mr. Bilinkas and Mr. Finkel, is there any reason why sentence should not be imposed at this time?

MR. FINKEL: No, your Honor.

MR. BILINKAS: No, your Honor.

THE COURT: Mr. Quirumbay, is there any reason why I should not sentence you at this time?

THE DEFENDANT: No, Your Honor.

THE COURT: All right. I have received a copy of the presentence investigation report, the addendum, and the sentencing recommendation from the court's probation office, all filed on March 7, 2019. I've also received a sentencing letter from Mr. Quirumbay's attorney which was filed on

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1 March 19 of 2019. I received a sentencing submission from the
2 government that was filed on March 22, 2019, and eight letters
3 of support from members of Mr. Quirumbay's family, his friends
4 and fellow Marines, as well as a letter from the facility where
5 Mr. Quirumbay is receiving treatment.

6 Have both sides seen these materials?

7 MR. FINKEL: Yes, your Honor.

8 MR. BILINKAS: Yes, your Honor.

9 THE COURT: Are there any other materials the parties
10 intended for me to review in contemplation of today's sentence?

11 MR. FINKEL: Not from the government.

12 MR. BILINKAS: No, your Honor.

13 THE COURT: Mr. Bilinkas, have you discussed the
14 presentence investigation report with the defendant?

15 MR. BILINKAS: Yes, your Honor. I have reviewed it,
16 and there are no additions or corrections.

17 THE COURT: Mr. Quirumbay, do you agree with that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Does the government have any unresolved
20 objections to raise as to any factual statements or the
21 guidelines calculation that are contained in the presentence
22 investigation report?

23 MR. FINKEL: It does not.

24 THE COURT: Thank you.

25 Having read the report and no objection having been

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1 made, I hereby accept and adopt the factual statements
2 contained therein and its analysis of the application of the
3 sentencing guidelines and note that the report is consistent
4 with the defendant's plea agreement which provides for a
5 sentencing guidelines range of zero to six months'
6 imprisonment.

7 With respect to the sentencing guideline calculations,
8 I find that the base offense level is six. Because the
9 defendant was a correctional officer at the time of the
10 offense, the offense level is increased by two levels. Because
11 the offense involves sophisticated means, the offense level is
12 increased by two levels. Because the defendant has
13 demonstrated acceptance of responsibility, the offense level
14 should be decreased by two levels pursuant to Section 3E1.1(a).
15 Accordingly, I calculate the defendant's total offense level to
16 be six with a criminal history category of I. This places the
17 guidelines range at zero to six months' imprisonment and the
18 fine range from \$1,000 to \$9,500.

19 Does the government wish to be heard with respect to
20 sentence?

21 MR. FINKEL: Yes, your Honor.

22 Your Honor, this is a difficult case for the
23 government from a sentencing perspective. The reason why -- I
24 think this is outlined a bit in the government's sentencing
25 submission -- is the conduct here is very serious. To be a

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1 correctional officer and willingly accept a bribe to introduce
2 contraband into the prison is a very serious crime, very
3 serious. The seriousness of the crime and the interest of
4 general deterrence here, I think, are significant.

5 On the other hand, the defendant in this case accepted
6 responsibility almost from the outset. He met with the
7 government. He was extremely forthcoming. He provided
8 information, answered all the government's questions, didn't
9 hold back at all. He wanted to cooperate the government, tried
10 to cooperate with the government. He wasn't able to cooperate
11 with the government, but not really because of himself, just
12 because he didn't quite know and have access to the sort of
13 information that would be required for the government to
14 determine that substantial assistance was provided.

15 In addition, the defendant's military record is, as I
16 mentioned in the sentencing submission, quite profound. He has
17 provided service on behalf this country that few, if any other,
18 people have. I think those factors are important for the Court
19 to consider while it also considers the seriousness of this
20 offense.

21 So on balance, your Honor, the government thinks a
22 guideline sentence is appropriate here.

23 THE COURT: Very well. Thank you.

24 Mr. Bilinkas, is there anything you'd like to say on
25 your client's behalf?

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1 MR. BILINKAS: Yes, Judge. First of all, I appreciate
2 the government's statements with regards to my client, his
3 attempt to cooperate with them, as well as his service.

4 Judge, this is something, if you look at those
5 letters, is something completely out of character for
6 Mr. Quirumbay. Other than that one act of indiscretion, he's
7 lived a law-abiding life. And service to his country, I would
8 say, is amazing, Judge. I've never even heard of someone who
9 wasn't even a citizen doing the things that he did on behalf of
10 this country.

11 He made a huge mistake here, Judge, and I can tell you
12 personally, in talking to his family, his mother and father,
13 his brother and sisters who are here, he has a great support
14 system. And they're suffering. He is suffering, Judge, for
15 his conduct. He truly feels horrible for doing what he's done,
16 and he's realized what the consequences are. He wanted a
17 career in law enforcement, and that clearly is not going to
18 happen.

19 He has certain disabilities as a result of his
20 service, Judge, post-traumatic stress as well as traumatic
21 brain injury. As opposed to a lot of veterans that I've
22 represented in the past, he's fought through them, got a
23 college education, and started a career. As you can tell from
24 those letters, Judge, he's a unique type of person.

25 As soon as this happened, again, I think he felt

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1 horrible and didn't seek to do anything else or continue in
2 this vein. When he got caught, he deeply regrets it. As
3 opposed to a lot of other clients that I've represented over
4 the last 38 years, Judge, I can tell you this deep emotional
5 regret that this young man has for what he has done, how he's
6 embarrassed not only himself but his family and all the people
7 that have looked up to him.

8 So, Judge, I would also ask you to sentence him within
9 that guideline range, and the bottom end of that range is zero.
10 I think if there was ever a case where someone deserved a
11 break -- and to get the low end of that range would be
12 probation -- I say, Judge, it's Mr. Quirumbay. I assure you
13 that for the rest of his life, he'll be trying to make up for
14 himself and to his family for the acts that he's done in this
15 particular case.

16 I thank you.

17 THE COURT: Thank you.

18 Mr. Quirumbay, is there anything you wish to say
19 before I sentence you? You are not required to say anything,
20 and your counsel's already spoken on your behalf, but this is
21 your opportunity if you wish to speak.

22 THE DEFENDANT: Yes, your Honor. First of all, your
23 Honor, thank you for allowing me the opportunity to speak. I
24 would like to take this opportunity to -- sorry. I'm a little
25 bit nervous -- to, first of all, thank the Court -- I mean

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1 apologize to the Court, apologize to the prosecutor, the agent,
2 and my girlfriend and my family who stands behind me.

3 My action in 2017 in September were completely out of
4 character. It's not who I am, your Honor. You know, I have
5 amazing support from friends, my family, my girlfriend,
6 ex-coworkers, fellow Marines. But I know that I let them down,
7 and I regret the actions that got me here. You know, it's
8 something I can't live with. I think about it day and night.
9 I just -- you know, I served this country honorably since I was
10 very young, with the support of my family, of course. I can't
11 go back in time, you know, and change my actions. I wish I
12 could. But like I promised my family, I promise the Court that
13 I will continue to better myself, get through this, and
14 continue to become a better person. I accept responsibility
15 for what I did, and I'm sorry.

16 THE COURT: All right. Thank you.

17 THE DEFENDANT: Thank you, your Honor.

18 THE COURT: Thank you. Please be seated.

19 In preparing to sentence Mr. Quirumbay, I've
20 considered the presentence investigation report, the
21 recommendation of the probation office, the letters submitted
22 by counsel, all the arguments made by counsel in their written
23 submissions, and all the presentations made in court here
24 today.

25 I've also considered all the factors that are set

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1 forth in Title 18, United States Code, Section 3553(a), which
2 states that the Court shall impose a sentence sufficient, but
3 not greater than necessary, to reflect the seriousness of the
4 offense, to promote respect for the law, to provide just
5 punishment for the offense, to afford adequate deterrence to
6 criminal conduct, to protect the public from further crimes of
7 the defendant, and to provide the defendant with needed
8 educational or vocational training, medical care, or other
9 correctional treatment in the most effective manner.

10 I'm also required to consider the following: the
11 nature and circumstances of the offense and the history and
12 characteristics of the defendant, the kind of sentences that
13 are available, the applicable sentencing guideline provisions,
14 any relevant Sentencing Commission policy statements, and the
15 need to avoid unwarranted sentencing disparities among
16 defendants with similar records who have been found guilty of
17 similar conduct.

18 Mr. Quirumbay, the crime that you are being sentenced
19 for today appears to be the only significant blemish on an
20 otherwise law-abiding and admirable life. You have no other
21 criminal history except for an alcohol-related driving
22 infraction. As the government notes in its submission, your
23 record of military service on behalf of the United States is
24 profound. The Court took particular note of the comments made
25 about you by your fellow Marines.

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1 Prior to the commission of the offense for which you
2 are being sentenced today, you were an exemplary citizen and a
3 role model for others to follow in your footsteps, but the
4 crime that you did commit was not a minor one, nor was it the
5 result of a moment's thoughtlessness. In exchange for a cash
6 bribe, you secreted into the Metropolitan Correctional Center
7 two cellular phones, chargers, and a small bottle of alcohol.
8 As I'm sure you're aware, the presence of cellular phones in a
9 correctional facility provides inmates with an avenue to commit
10 crimes, tamper with witnesses, and they pose a significant
11 danger to the administration of justice.

12 You had a good job, and it's a job that's an important
13 job. As a correctional officer, you were in a position of
14 public trust, and you breached that trust. You abused your
15 position to benefit yourself personally.

16 Now, the core values of the United States Marines are
17 honor, courage, and commitment. You served our country by
18 putting your life on the line and surely showed tremendous
19 courage and commitment, but you've brought dishonor to
20 yourself. That said, I am mindful that this is your first and,
21 I assume, last significant contact with the criminal justice
22 system. I do believe you are remorseful and you're prepared to
23 be a law-abiding citizen once again; that you will rehabilitate
24 yourself in the eyes of your family, your friends, and your
25 fellow Marines; and that you will not engage in any further

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1 criminal conduct.

2 Accordingly, I intend to sentence you as follows:

3 First, one year of probation, which is within the
4 guidelines and which, in my view, is appropriate for the same
5 reasons the probation office recommended a sentence of
6 probation rather than incarceration, including your military
7 service, your many years as a productive and law-abiding member
8 of society, the nonviolent nature of your offense, and the low
9 risk of recidivism;

10 A fine of \$1,400, which is the amount of the bribe
11 which you received. Given your monthly cash flow as set forth
12 in the presentence investigation report, I am providing this
13 amount be paid at a rate of \$50 per month starting 30 days from
14 entry of judgment; and

15 A special assessment in the amount of \$25, which is
16 mandatory.

17 The probation office recommended that I impose four
18 months of location monitoring and to restrict you to your
19 residence during that period except for certain purposes, which
20 would have had the effect, essentially, of placing you on home
21 detention. In my discretion, I do not impose that condition.
22 The sentencing guidelines provide that home detention may be
23 imposed as a condition of probation, but only as a substitute
24 for imprisonment. That's Section 5F1.2. Since I do not find
25 that imprisonment is warranted, I decline to impose any period

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1 of location monitoring.

2 Does defense counsel have any objection to this
3 sentence that I intend to impose or know of any legal reason
4 why I should not impose it as stated?

5 MR. BILINKAS: Absolutely not.

6 THE COURT: Does the government have any objection to
7 the sentence I intend to impose or know any legal reason why it
8 should not be imposed as stated?

9 MR. FINKEL: No, your Honor.

10 THE COURT: Mr. Quirumbay, please stand.

11 It is the judgment of this Court that you be sentenced
12 to one year of probation, a fine of \$1,400, and a \$25 special
13 assessment.

14 Now I'm going to read you certain mandatory
15 conditions.

16 While on probation, you shall not commit another
17 federal, state, or local crime, and you shall not unlawfully
18 possess a controlled substance.

19 I am suspending the mandatory drug testing condition
20 because I determine you pose a low risk of future substance
21 abuse.

22 You must notify the Court of any material change in
23 your economic circumstances that might affect your ability to
24 pay the fine that I imposed.

25 In addition, I am imposing the standard conditions of

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1 supervision along with special conditions.

2 You must report to the probation office in the federal
3 judicial district where you're authorized to reside within 72
4 hours of the time you were sentenced unless the probation
5 officer instructs you to report to a different probation office
6 or within a different time frame. After initially reporting to
7 the probation office, you'll receive instructions from the
8 Court or the probation officer about how and when you must
9 report to the probation officer, and you must report to the
10 probation officer as instructed.

11 You must not knowingly leave the federal judicial
12 strict where you're authorized to reside without first getting
13 permission from the Court or the probation officer.

14 You must answer truthfully the questions asked you to
15 by the probation officer.

16 You must live at a place approved by the probation
17 officer. If you plan to change where you live or anything
18 about your living arrangements, such as the people that you
19 live with, you must notify the probation officer at least ten
20 days before the change. If notifying the probation officer in
21 advance is not possible due to unanticipated circumstances, you
22 must notify the probation officer within 72 hours of becoming
23 aware of a change or expected change.

24 You must allow the probation officer to visit you at
25 any time at your house or elsewhere, and you must permit the

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1 probation officer to take any items prohibited by the
2 conditions of your supervision that he or she observes in plain
3 view.

4 You must work full-time -- that's at least 30 hours a
5 week -- at a lawful type of employment unless the probation
6 officer excuses you from doing so. If you do not have
7 full-time employment, you must try to find full-time
8 employment, again, unless the probation officer excuses you
9 from doing so.

10 If you plan to change where you work or anything about
11 your work, such as your position or your job responsibilities,
12 you must notify the probation officer at least ten days before
13 the change. If notifying the probation officer at least ten
14 days in advance is not possible due to unanticipated
15 circumstances, you must notify the probation officer within 72
16 hours of becoming aware of a change or expected change.

17 You must not communicate or interact with someone you
18 know is engaged in criminal activity. If you know someone has
19 been convicted of a felony, you must not knowingly communicate
20 or interact with that person without first getting the
21 permission of the probation officer.

22 If you are arrested or questioned by a law enforcement
23 officer, you must notify the police officer within 72 hours.

24 You must not own, possess, or have access to a
25 firearm, ammunition, destructive device, or dangerous weapon.

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1 That is, anything that was designed or modified for the
2 specific purpose of causing bodily injury or death to another
3 person such as nunchucks or Tasers.

4 You must not act or make any agreement with a law
5 enforcement agency to act or confidential human source or
6 informant without first getting permission of the Court.

7 If the probation officer determines you pose a risk to
8 another person, the probation officer may require you to notify
9 the person about the risk, and you must comply with that
10 instruction. The probation officer may contact the person and
11 confirm you've notified the person about the risk.

12 You must follow all the instructions of the probation
13 officer related to the conditions of supervision.

14 Now, special conditions. You must provide the
15 probation officer with access to any requested financial
16 information, and you must participate in an outpatient mental
17 health treatment program approved by the United States
18 Probation Office, and you must continue to take any prescribed
19 medications unless otherwise instructed by the healthcare
20 provider. You must contribute to the cost of services rendered
21 based on your ability to pay and the availability of
22 third-party payments. The Court authorizes the release of
23 available psychological and psychiatric evaluations and
24 reports, including the presentence investigation report, to the
25 healthcare provider.

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1 It is further ordered you must pay the United States a
2 special assessment of \$25. You shall notify the United States
3 Attorney within 30 days of any change of mailing or residence
4 address that occurs while any portion of the fine remains
5 unpaid.

6 Failing to abide by these conditions could result in
7 your imprisonment. Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: All right. You may be seated.

10 All right. I'm now going to read to you certain
11 appeal rights that you have.

12 You can appeal your conviction if you believe that
13 your guilty plea was somehow unlawful or involuntary or if
14 there's some other fundamental defect in the proceedings that
15 was not waived by your guilty plea. You also have a statutory
16 right to appeal your sentence under certain circumstances,
17 particularly if you think that the sentence is contrary to law.
18 However, you should understand that a defendant may waive his
19 appeal rights as part of a plea agreement, and you have entered
20 into a plea agreement which waives some or all of the rights to
21 appeal the sentence itself. Such waivers are generally
22 enforceable, but if you believe that the waiver is
23 unenforceable, you can present that theory to the appellate
24 court.

25 With few exceptions, any notice of appeal must be

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1 filed within 14 days of the judgment being entered in your
2 case. Your attorney will discuss with you whether or not you
3 wish to file a notice of appeal. If you're not able to pay the
4 cost of an appeal, you may apply for leave to appeal *in forma*
5 *pauperis*. If you request, the clerk of the court will prepare
6 and file a notice of appeal on your behalf.

7 I direct that a copy of the presentence investigation
8 report be provided to the Sentencing Commission and that
9 counsel on any appeal have access to the report. Otherwise, it
10 will remain under seal. The clerk will prepare the judgment
11 and see to it that the required documentation is sent to the
12 Sentencing Commission.

13 Now, my deputy will be providing Mr. Quirumbay with a
14 special assessment form for him to take to the clerk's office
15 in order to pay the special assessment fee today.

16 Do the parties have any other applications they'd like
17 to make?

18 MR. FINKEL: Yes, your Honor. The government moves to
19 dismiss any open counts.

20 MR. BILINKAS: Nothing further, Judge.

21 THE COURT: Your motion to dismiss is granted.

22 MR. FINKEL: Thank you.

23 MR. BILINKAS: Thank you, Judge.

24 THE COURT: All right. This matter's adjourned.

25 Thank you. (Adjourned)